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Sovereignty, International Relations, and the Westphalian Myth

Andreas Osiander

The 350th anniversary of the Peace of Westphalia in 1998 was marked by a flurry of conferences and publications by historians, but it was largely ignored in the discipline of international relations (IR). This oversight is odd because in IR the end of the Thirty Years' War is regarded as the beginning of the international system with which the discipline has traditionally dealt. Indeed, the international system has been named for the 1648 peace.[1] For some time now, this "Westphalian system," along with the concept of sovereignty at its core, has been a subject of debate: Are the "pillars of the Westphalian temple decaying"?[2] Are we moving "beyond Westphalia"?[3]

In this debate, "Westphalia" constitutes the taken-for-granted template against which current change should be judged. I contend, however, that the discipline theorizes against the backdrop of a past that is largely imaginary. I show here that the accepted IR narrative about Westphalia is a myth.

In the first section of the article I discuss what this narrative says about the Thirty Years' War. In the second section I discuss the alleged link between 1648 and the creation of a new, sovereignty-based international system. In the third section I discuss the Holy Roman Empire—with which, though this is seldom noted, the Peace of Westphalia was almost exclusively concerned. In the process it will become clear that "Westphalia"—shorthand for a narrative purportedly about the seventeenth century—is really a product of the nineteenth- and twentieth-century fixation on the concept of sovereignty. I conclude by discussing how what I call the ideology of sovereignty has hampered the development of IR theory and by

I wish to express my gratitude both to the anonymous reviewers and to the editors of *IO* for invaluable help with this article.

1. For a recent critique of this usage from a non-Anglo-Saxon perspective, see Duchhardt 1999.
2. Zacher 1992.
3. Lyons and Mastanduno 1995.

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suggesting that the historical phenomena analyzed in this article may help us to gain a better theoretical understanding of contemporary international politics.

The Thirty Years' War and the Problem of Hegemonial Ambition

According to the standard view, the Thirty Years' War was a struggle between two main parties. On one side were the "universalist" actors: the emperor and the Spanish king, both members of the Habsburg dynasty. Loyal to the Church of Rome, they asserted their right, and that of the Pope, to control Christendom in its entirety. Their opponents were the "particularist" actors, specifically Denmark, the Dutch Republic, France, and Sweden, as well as the German princes. These actors rejected imperial overlordship and (for the most part) the authority of the Pope, upholding instead the right of all states to full independence ("sovereignty").

Quotes showing the prevalence of this view in IR are easily adduced. David Boucher states that the settlement "was designed to undermine the hegemonic aspirations of the Habsburgs."[4] Hedley Bull says that it "marked the end of Habsburg pretensions to universal monarchy."[5] According to Graham Evans and Jeffrey Newnham's *Dictionary of World Politics,* the settlement "marked the culmination of the anti-hegemonic struggle against the Habsburg aspirations for a supranational empire."[6] For Kal Holsti the war was mainly fought over "religious toleration . . . and the hegemonic ambitions of the Hapsburg family complex."[7] According to Michael Sheehan, the peace "refuted the aspirations of the papacy and the Holy Roman Empire to recreate a single Christian imperium."[8]

Albeit widely shared, this interpretation is dubious. It hinges on the notion that the Habsburgs were a threat to the "nascent" individual states.[9] But, quite apart from the fact that most of the states in question had been around for a long time, neither their survival nor even their independence was at stake in this war. None of the actors fighting the Habsburgs went to war for defensive purposes, as I show in the remainder of this section.[10]

4. Boucher 1998, 290.
5. Bull 1977, 32.
6. Evans and Newnham 1990, 420.
7. Holsti 1991, 34.
8. Sheehan 1996, 38.
9. Holsti 1991, 26.
10. Recent treatments of the war include Asch 1997; Burkhardt 1992 and 1998; Schmidt 1998; and Schormann 1993. While I am indebted to these works, in terms of interpretation the synthesis offered here is my own.

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The Bohemian Secession and the Near Collapse of Habsburg Power in Central Europe

The original Bohemian crisis did not break out because the Habsburgs were powerful, but because in important respects they were weak. In the early seventeenth century the system of government throughout much of Europe, including the Habsburg territories in central Europe, was "dualist" (the technical term employed by historians). Power was shared between the prince and the notables of the realm, known as the estates. The "balance of power" between these two poles might favor one side or the other; in the case of the Habsburg kingdoms of Bohemia and Hungary it had increasingly come to favor the estates. While the dynasty remained Catholic, the estates were largely Protestant. Anxious to forestall any attempt by the crown to limit their religious freedom, the Bohemian and Hungarian estates took advantage of a quarrel within the dynasty to strengthen their constitutional position.

To consolidate those gains and to maintain their own influence, in 1618 the radicals among the Bohemian estates initiated an uprising that sidelined the pro-Habsburg "doves" and eliminated any remaining power of the Habsburg-held crown. Eventually, following the death of Emperor Matthew, a Habsburg, in 1619, the Bohemian estates deposed his heir, Ferdinand, and persuaded the elector Palatine Frederick, a German Protestant, to be their king. The Hungarian estates also elected a Protestant, Gábor Bethlen, to replace Ferdinand. The Habsburgs seemed set now to lose the imperial title as well. The Bohemian king was a member of the seven-strong electoral college by which the emperor was chosen. With the Bohemian crown in Protestant hands, there would be a Protestant majority in the college.

The Habsburg position in central Europe was thus on the brink of collapse. Twice in 1619 rebel troops reached the suburbs of Vienna. The Spanish king sent both money and troops, but the imminent resumption of the Spanish-Dutch war (at the expiry in 1621 of a twelve-year truce) made it difficult for him to put his full military weight behind Ferdinand. In this situation, a crucial question was what the German princes would do. Some Protestant princes and free cities of the empire had formed an anti-Catholic alliance, called the "Union." Its leader was none other than the elector Palatine, soon to be the new Bohemian king. A counteralliance named the "League" was headed by the duke of Bavaria, the most powerful of the Catholic German princes. In the past, he had played second fiddle to the Habsburgs but had done his best to rival their influence in the empire. Now, with Ferdinand (to whom he was also closely related) in a desperate situation and dependent on League support, the ambitious duke found himself an arbiter of his kinsman's fate.

As it turned out, rather than welcome the opportunity to bring the Habsburgs down, the German princes, including, crucially, both the Protestant ones and Bavaria, instead distanced themselves from Frederick. His collusion with rebels against their legitimate ruler alienated his fellow princes. Moreover, he was expected to take advantage of the religious dimension of the conflict and use his position as head of the Union to defend his "ill-gotten" royal title. This would almost

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certainly lead to war in the empire at large between the Union and the League, a prospect universally dreaded.

When the imperial throne was left vacant by the death of Emperor Matthew, the electoral college elected Ferdinand emperor in August 1619. Significantly, it did so unanimously, with all three Protestant votes going to Ferdinand. A member of the college, Frederick sought to delay the proceedings until after the Bohemian estates had deposed Ferdinand. But though they did so a few days before the election, Ferdinand, not Frederick, was allowed to cast the Bohemian vote. Contrary to what Frederick had hoped and worked for, the duke of Bavaria refused to be a candidate against Ferdinand. In the end, Frederick voted for Ferdinand himself to avoid a gratuitous further provocation.

Although Frederick did mount the Bohemian throne, he failed to obtain the British and Dutch support on which he had counted. In Germany, the Union eventually put its desire to prevent the crisis from spreading to the rest of the empire ahead of other considerations. Despite Frederick's position as its leader, the Union accepted a nonaggression pact with the Catholic League. This enabled the League to assist Ferdinand against the elector Palatine. The Union then fell apart: while religious affiliation always played an important role in the conflict, at no point between 1618 and 1648 did it produce stable cleavages along religious lines. Aided not only by the duke of Bavaria and League troops but also by troops of the Protestant elector of Saxony, Ferdinand reconquered the Bohemian capital in November 1620 and drove Frederick into exile. Gábor Bethlen stepped down as ruler of Hungary and made peace with Ferdinand.

The Habsburgs thus preserved their position in central Europe, but, inevitably, Ferdinand emerged from the crisis a somewhat diminished figure. He was emperor now, but the power of that office was limited and subject to constitutional checks and balances (see the third section). He was also heavily indebted, not just morally but financially, to the rulers of Saxony and Bavaria. His fate had been in their hands, and he had been forced to buy their support through the promise of significant rewards. Ferdinand transferred important Habsburg territories—respectively, Lusatia and Upper Austria—to their temporary ownership since he could not meet his obligations to them immediately (and would not for a long time to come; in fact, Lusatia was eventually transferred to Saxony for good).

The Danish Bid for Expansion and the Sudden Rise and Decline of Habsburg Hegemony in Germany

Throughout this initial phase of the war, key actors regarded Habsburg power as less threatening than the prospect of its collapse. This only changed in the second, "Danish" phase of the war (1625–29).

Of the two branches of the Habsburg dynasty, the Spanish branch was the more powerful; but though its position in the European system was formidable, it did not threaten the independence of other actors. Its dominions formed the largest monarchy in Europe in geographical, but not demographical, terms; militarily, this was

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not an undiluted advantage. In the Spanish-Dutch conflict the Dutch were well able to hold their own. On its expiry in 1621, a twelve-year truce between the two actors could have been renewed or even turned into a proper peace treaty. There was a peace party on both sides. Despite the truce, however, the Dutch had continued to harass the Spanish colonies, and the trade with them, doing much economic damage. In resuming the war, the Spanish government had few illusions that Dutch independence could be undone. It did hope to improve the terms on which Dutch sovereignty would finally be recognized over those accepted in 1609 and regarded as humiliating; meanwhile, open war might relieve the pressure on the colonies. Conversely, in 1621 the prevailing view among the Dutch was that resuming the war would bring greater concessions from Spain.[11]

Dutch willingness to engage the Spanish—who, therefore, would not be able to intervene forcefully in Germany—emboldened the Danish king to prepare a military strike against troops of the Catholic League (not the emperor) who remained garrisoned in north Germany after the fight against Frederick. The king, a Protestant, feared that these troops would be employed to repossess some north German ecclesiastical principalities that had passed into Protestant hands—illegally, from a Catholic point of view.

The principalities in question were bishoprics whose incumbents had the same rights as secular princes of the empire except that their position was not hereditary. They were elected for life by the cathedral chapters. The 1555 religious settlement concluded among the princes and free cities of the empire gave them the power to determine freely whether their lands should be Catholic or Protestant. However, ecclesiastical territories were excluded from this provision by a clause known as the *reservatum ecclesiasticum.* With the important exception only of the Habsburgs and Bavaria, most secular princes in the empire and most of the free cities were Protestant, which made the *reservatum ecclesiasticum* crucial for maintaining the political role of Catholicism in the empire. Unfortunately for the Catholic side, this clause was contested by the Protestant camp and had not stopped further Protestant inroads into ecclesiastical territories.

Canons would turn Protestant and then elect to the episcopal see some member of a Protestant dynasty who they hoped would protect them, or who bribed or bullied them. And once a powerful princely house got hold of the see, dislodging it would be almost impossible, since it would then control the appointment of new canons. It was clear that the more bishoprics were lost to Protestantism in this fashion, the more the chances of recovering any of them for the Catholic camp diminished.

This problem of critical mass explains the importance of who would secure control of the north German bishoprics. No one understood this better than the Protestant Danish king. Operating in the shadow of the Bohemian crisis, in the early 1620s he had cajoled no less than three cathedral chapters—Bremen, Verden, and Halberstadt—into electing the second of his two sons to succeed the current

11. See Elliott 1998, 27; and Israel 1998, 117–19.

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incumbents (still alive at that point); and he was working on Osnabrück. With the promise of Dutch and British subsidies, and the hesitant support of the Protestant north German princes and free cities, he now deployed an army in north Germany. His main purpose was to defend his claims and north German Protestantism; but to qualify for Dutch and British subsidies he also had to adopt the cause of the deposed elector Palatine. With Spain distracted by the Dutch, the emperor and the Catholic League looked weak enough for the Danish venture to be promising.

Unpredictably, at this point an altogether exceptional figure entered the scene: Albrecht von Wallenstein. A nouveau riche Bohemian nobleman with uncommon managerial and strategic abilities, he offered the impecunious emperor an army, which he would raise and initially pay for himself (he would later bill the emperor punctiliously for all expenditures incurred). This flamboyant gesture struck many at the imperial court as too bizarre, and indeed humiliating, to accept; however, after much deliberation, the court did accept the offer in direct response to news that the Danish king was leading an army to secure the reinstatement of Frederick. The emperor at that time had few troops of his own; those of the League were not under his command and essentially were controlled by the duke of Bavaria. In 1629 Wallenstein forced the Danish king to accept a peace that basically restored the status quo ante. The king had to renounce the bishoprics to which he had had his son elected (but none of them had actually passed into the son's possession yet).

As a result of the failed Danish intervention, and thanks, in large part, to Wallenstein, north Germany now found itself under the military control of the emperor. Many feared that he would make himself "the master of Germany," as a famous anonymous pamphlet of 1628 put it, which no emperor had been in the past. In retrospect, it seems clear that this was not his aim; Habsburg archives have yielded no evidence for any such program.[12] But, in the heated atmosphere of the time, everything the emperor did was taken as corroboration of sinister, oppressive designs. Events in Bohemia seemed to set an alarming precedent. There, Ferdinand restored the leading role both of Catholicism and the crown by expropriating and expelling much of the Protestant nobility and enacting a new constitution that reduced the prerogatives of the estates. Would the emperor attempt something similar in Germany?

Having deposed the existing dynasty for supporting the Danish king, in 1628 Ferdinand made Wallenstein duke of Mecklenburg, a large north German principality. For the cash-starved emperor, this move was, not least, a means to dispose of some debts. But it caused strong antagonism. The Protestant camp was rattled by this transferal of a Protestant principality to a Catholic by a stroke of the pen, and the princes of the empire, Catholic and Protestant alike, were concerned about the summary removal of an ancient ruling family in favor of a despised upstart. In 1629 Ferdinand proceeded to decree the re-catholicization of all church assets that had passed into Protestant hands after the Augsburg religious settlement. This so-called

12. See Albrecht 1990; Haan 1977; and Sturmberger 1957.

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Edict of Restitution, designed to enforce the *reservatum ecclesiasticum* of 1555, was to be applied to the entire empire.

We have seen how the Danish intervention was dictated by a combination of territorial ambition and concern over the religious balance of power in the empire. This concern was also behind the Edict of Restitution, whose main purpose was to stop, indeed reverse, the continual decline in the number of Catholic ecclesiastical princes of the empire since 1555 and to recover other assets (such as monastic endowments) for the Catholic church. Again, the measure caused much discontent. Not only would many Protestant princes suffer important losses; there was concern even among Catholic princes of the empire about this kind of imperial unilateralism.

It is often implied today that, in some roundabout way, the edict aimed at strengthening the emperor. More plausibly, its main motive was genuinely religious, since Ferdinand II was an extremely pious man. Any gain for the emperor himself was outweighed by the political cost of the measure. By issuing the edict, he effectively turned on his own followers in the Protestant camp. He now lost the support of the elector of Saxony, with disastrous political and military consequences over the next few years. At the same time, the edict itself would have to be enforced militarily. It thus effectively diminished the emperor's resources while increasing, and seriously overstretching, his commitments.

That the measure dangerously weakened Ferdinand was the view both of Wallenstein, who initially refused to carry it out, and of the Spanish government.[13] Madrid was furious about the edict because it needed all the troops that Ferdinand could spare to support it in a war against France that had broken out in northern Italy in 1628. Although Wallenstein insisted that he could spare no troops, Ferdinand, the recent beneficiary of Spanish aid, sent some troops to Italy anyway. This caused further irritation in Germany, where there was strong sentiment that the empire should not become involved in the long-standing Franco-Spanish rivalry just because the emperor was a cousin of the Spanish king.

The powerful electoral college leveled its anger at Ferdinand when it met with him (as it did quite regularly) at Regensburg in 1630. Since an emperor usually expected the college to elect his own chosen successor during his lifetime, he had a strong stake in maintaining good relations with it. The cost of not doing so was brought home to Ferdinand when, at Regensburg, the college denied his request to elect his eldest son emperor-designate. The college also demanded that he dismiss his unpopular generalissimo, Wallenstein, along with three-quarters of his troops; the remaining troops were to be merged with the League army, which Ferdinand did not control. Furthermore, the college told the emperor to withdraw from Italy. Strikingly, Ferdinand met these demands in full even though the college still refused to settle his succession. Before the conference was over, Wallenstein was removed from office and his army was being disbanded. Ferdinand accepted a peace agreement with France while he was still at Regensburg.

13. Elliott 1998, 32.

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The Swedish Bid for Expansion and the French Attempt to Break Habsburg Power

If, again, the war continued, it was because the Swedish and French crowns saw it as a means to enhance their own positions in Europe by eroding the position of the Habsburgs.

Following the defeat of the Danish king, his rival in the Baltic, King Gustaf Adolf of Sweden, now decided to take his turn to attack the emperor, ostensibly to protect Germany from Habsburg oppression in general and the Edict of Restitution in particular. While the electoral college met at Regensburg (July to November 1630), Swedish troops invaded north Germany (in early July), though no one at Regensburg appears to have taken the invasion seriously.

The invasion at first was hampered by financial difficulties and a disinclination by Protestant princes of the empire to rally around their self-appointed savior, King Gustaf Adolf. Moreover, it was apparently assumed that the Swedish king's main aim was to restore Mecklenburg to its rightful Protestant dynasty. This meant that Wallenstein would be deprived of that duchy, a prospect that many in the empire welcomed. But once the Swedes had overcome their initial difficulties, it became clear that their agenda was not to conduct a geographically limited intervention but to deliver a decisive blow to both Habsburg and German Catholicism. The League army proved no match for the Swedish troops, and many Protestant princes and free cities of the empire now joined the Swedish side, though reluctantly and for the most part in response to military pressure. It is ironic that Gustaf Adolf invaded the empire for the stated purpose of removing the threat posed by the emperor just when the electoral college stripped Ferdinand of much of his military power. Indeed, the Swedish invasion brought the collapse of the Regensburg agreement and the reinstatement of Wallenstein as commander of the emperor's forces.

After the decisive Swedish defeat of 1634, and with both Gustaf Adolf and Wallenstein dead, the emperor and the Protestant elector of Saxony reached an agreement. The princes and free cities of the empire were invited to accede to this so-called Peace of Prague, and almost all of them did. If that settlement had entered into force, the emperor would have secured substantial gains for the Catholic church but would, for all practical purposes, have abandoned the Edict of Restitution. The Mecklenburg dynasty would have been rehabilitated. Alliances of the princes and cities of the empire with each other (such as the Union and the League) would have been banned but not alliances with actors outside the empire. There would have been in the future only a single army in the empire, the greater part of which would have been under the command of the emperor, with smaller contingents commanded by the rulers of Saxony and Bavaria. Although this settlement would have strengthened the emperor, the point should not be taken too far. The peace would have left the constitution of the empire, with its checks on imperial power, unchanged in other respects. Certainly, the electoral college was sufficiently pleased with Ferdinand to proceed, in 1636, with the election of his son as emperor-designate (who succeeded

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Ferdinand at his death in 1637). But the peace did not take effect. Now, the French king (re-)entered the war to prevent the emperor from getting out of it.

After crushing French Protestantism and its threat to the authority of the crown militarily (the main Protestant stronghold, La Rochelle, surrendered in 1628), the French chief minister, Cardinal Richelieu, concentrated on enhancing his king's position abroad. In order to drain Habsburg resources Richelieu sought to engage the Habsburgs on as many fronts as possible. He pursued the aim of finally winning the long-standing competition between the Habsburgs and the House of Bourbon.

Richelieu's war with Spain in northern Italy over the succession of the late duke of Mantua (1628–31) has already been mentioned. Through his success there—owing in part to the electoral college's pressure on the emperor to withdraw his support for Spain—Richelieu gained a foothold in northern Italy (in particular, the key fortress of Pinerolo). This threatened Spain's extensive possessions centered in Milan, which were important not only in themselves but also for the Spanish war effort in the Low Countries: The main supply route between Spain and the Spanish southern Netherlands was by sea; however, the naval strength of the Dutch (in the northern Netherlands) made that route hazardous, and so the preferred route was by land from northern Italy through the Rhine Valley.

To increase Spanish dependence on this overland route vulnerable to attack from French soil, Richelieu was anxious to maintain military pressure on Spain. For a while (1631–35) he was content to make war by proxy and channeled large amounts of money to the Dutch to help pay for their war against Spain. He also channeled money to the Swedes. The Swedish king was engaged in a war with the king of Poland, but in 1629 Richelieu brokered a truce between them with the explicit purpose of enabling Gustaf Adolf to attack the emperor instead. Richelieu's motive was to prevent Ferdinand from being of assistance to the Spanish king now that Denmark had quit the war.

Once Richelieu had established a French presence in northern Italy, he prepared to block the Rhine Valley, at last declaring war on the Habsburgs almost simultaneously with the Peace of Prague. He feared that after the Swedes' crushing defeat in 1634, nonmilitary French support might not be enough to keep them fighting. At the same time he was surprised by the scope of their operations in the empire. Both their geographic extent and their devastation of Catholic territories impinged on what Richelieu thought should be a French zone of influence, namely, southern and western Germany and the lesser Catholic princes of the empire. By resuming active warfare against the Habsburgs, he could keep the Swedes in the war and also counterbalance them.

Summary

I am aware that historians specializing in this period will regard my brief account of the war as outrageously simplified. Even so, it demonstrates the complexity of the conflict and the variety of considerations guiding the belligerents, factors that make the search for a single fundamental issue a dubious undertaking. However, it should

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have become clear that the very issue generally put forward, the struggle between universalism and particularism or between empire and sovereignty, has little to commend it. The war was not fought because the Habsburgs were straining to expand their role, but because other actors were seeking to diminish it. The Habsburgs did not want this war and did not threaten the independence of other actors, least of all outside the empire. Conversely, once the war had begun, what sustained it was expansionist aggression by other actors. The Danish, Swedish, and French crowns all entered, and prolonged, the conflict through deliberate planning, absent any immediate threat, and in order to aggrandize themselves.

The Danish king feared that the forces of the counterreformation might get hold of the north German bishoprics before he did. In the case of Gustaf Adolf, the decision to intervene in Germany was, perhaps, influenced by fear that the emperor would threaten Swedish domination of the Baltic. Yet this explanation does not account for the huge scale of the Swedish operations in the empire. Safeguarding the Swedish position in the Baltic hardly necessitated the capture of Munich. Unfortunately, we have no first-hand information on what kind of concrete, ultimate goal Gustaf Adolf was pursuing. There was and is talk about his plans for a Protestant empire. This remains speculative, but, in any case, the Swedish intervention in the war cannot easily be described as defensive.

There is no ambiguity regarding Richelieu's intentions, since the meticulous cardinal left a wealth of written evidence about his thinking. In a 1632 memorandum, for example, Richelieu spells out what he saw as the point of direct French intervention in the war: to make it possible "to ruin the House of Austria completely, . . . to profit from its dismemberment, and to make the [French] king the head of all the catholic princes of Christendom and thus the most powerful in Europe." This goal would be achieved jointly with the Swedes, but afterwards the Swedish king would be no match for the French king, not least because he "does not have resources similar to those of France."[14]

1648: Peace, Propaganda, and the (Non-)issue of Sovereignty

If the war was not fought to ward off a threat to the independence of other European actors posed by the Habsburg dynasty, then the traditional interpretation of the 1648 peace cannot be right either. Scholars, especially in IR, often see the peace as having been concerned with the issue of sovereignty, and more generally with the need to reorder the European system and give it new rules.

David Boucher, for example, contends that the settlement "provided the foundation for, and gave formal recognition to, the modern states system in Europe"; elsewhere he claims that it "sanctioned the formal equality and legitimacy of an

14. Richelieu 1997, 518–20.

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array of state actors, while at the same time postulating the principle of balance as the mechanism to prevent a preponderance of power."[15] Seyom Brown speaks of the "Westphalian principles" and elaborates that "even to this day two principles of interstate relations codified in 1648 constitute the normative core of international law: (1) the government of each country is unequivocally sovereign within its territorial jurisdiction, and (2) countries shall not interfere in each other's domestic affairs."[16] Evans and Newnham's *Dictionary of World Politics* finds that "a number of important principles, which were subsequently to form the legal and political framework of modern interstate relations, were established at Westphalia. It explicitly recognized a society of states based on the principle of territorial sovereignty."[17]

Kal Holsti explains that "the peace legitimized the ideas of sovereignty and dynastic autonomy from hierarchical control. It created a framework that would sustain the political fragmentation of Europe."[18] According to Torbjörn Knutsen, "the powers of the pope and the emperor . . . were drastically reduced by the Treaty of Westphalia. With this Treaty, the concept of the territorial state gained common acceptance in Europe."[19] Hans Morgenthau asserts that certain "rules of international law were securely established in 1648"; more specifically, "the Treaty of Westphalia . . . made the territorial state the cornerstone of the modern state system."[20] According to Frederick Parkinson, the settlement "spelt out in full the terms on which the new international diplomatic order was to be based."[21] Michael Sheehan believes that the settlement "formally recognized the concept of state sovereignty."[22] Hendrik Spruyt declares that "the Peace of Westphalia . . . formally acknowledged a system of sovereign states."[23] Mark Zacher speaks of "the Treaty of Westphalia of 1648 which recognized the state as the supreme or sovereign power within its boundaries and put to rest the church's transnational claims to political authority."[24]

Such quotes could be multiplied almost at will. Yet the actual treaties do not corroborate any of the claims quoted earlier: the settlement to which they refer is a figment of the imagination. How can it be that for decades IR has accepted a fictional account of the settlement? In this section I will show first that while the Westphalian myth has little or nothing to do with the real stakes over which the war was fought, it does reflect the claims of seventeenth-century anti-Habsburg propaganda. Second, I will try to explain how this propaganda image of the war made its way into IR and why it fell on such fertile ground there. Finally, the popular image

15. Boucher 1998, 289, 225.
16. Brown 1992, 74.
17. Evans and Newnham 1990, 420.
18. Holsti 1991, 39.
19. Knutsen 1992, 71.
20. Morgenthau 1985, 294.
21. Parkinson 1977, 33.
22. Sheehan 1996, 38.
23. Spruyt 1994, 27.
24. Zacher 1992, 59.

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of the 1648 peace must be corrected by showing what the settlement was really about.

War and Propaganda

Never before or during the war was the emperor in a position to threaten the long-established independence of actors outside the Holy Roman Empire. With the exception of the Habsburg dynastic lands, even the principalities and free cities of the empire itself were not actually governed by the emperor (see the third section). As mentioned, there is no indication that, even at the height of his military power in the late 1620s, the emperor intended to change that.

Ironically, the very fact that Ferdinand enjoyed military preponderance in Germany only so briefly before it dissolved again under the impact of a combination of factors (overcommitment by virtue of the Edict of Restitution, the felt obligation to help the Spanish king in Italy, the revolt of the electoral college, the Swedish intervention) greatly helped the anti-Habsburg propaganda. Because the moment of imperial power did not last, it remained possible to accuse the emperor of all sorts of things that he had allegedly intended to do, or would still do given the chance.

In an important sense, the war certainly can be seen as a jostling for position among major European actors. In the Middle Ages, the emperor was the notional secular head of Christian society, conceived of as a single hierarchy. This notional position was a matter of rank, based on historical convention, rather than power. In the seventeenth century, despite the religious schisms, the conception of Christendom as a single society and a single hierarchy was still strong. There was as yet no notion of a system in which actors would regard each other as equal, as Johannes Burkhardt has rightly insisted (this notion did not really gain ground until the eighteenth century). Therefore, to borrow an apt image from Burkhardt, a major power struggle among dynastic actors could not but become a jostling for the top of the pyramid.[25] Burkhardt adopts the view that by the seventeenth century the place at the top of the pyramid was vacant, at least in the sense that there was no agreement on its rightful occupant.[26]

But as the imperial dynasty, the Habsburgs had long been the most obvious contender for top rank in Christian society. They had tradition and legitimacy on their side. Their combined dominions not only were more extensive than those of any other dynasty but had been acquired (at least within Europe) very largely through nonviolent means, especially marriage; contrary to what is often supposed, at that time conquest was regarded as a dubious title to possession.[27] Again, although the Habsburgs had monopolized the imperial dignity, that, too, was owed not to raw power but to custom and established legal procedures. The imperial title as such did not bestow great power. But as the senior royal title in Christendom, it

25. Burkhardt 1998.
26. Ibid., 52.
27. Osiander 1994, 49–51.

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carried immense prestige; in the aristocratic political culture of the era, that was more valuable than we can readily imagine today. All those assets were based on inherited right or ancient custom. The obvious legitimacy of the Habsburgs made challenging their primacy, in terms of rank, all the more difficult.

By contrast, the French and Swedish crowns brought power to the struggle rather than legitimacy. To be sure, King Gustaf Adolf in 1630 probably had fewer than a million subjects[28]—no more than the rulers of Saxony or Bavaria. But he also had charisma, generous French subsidies, and a serviceable ideology as defender of the Protestant faith. Had the king lived longer, some form of Protestant counter-empire might perhaps have been founded on this as a more extensive power base than that provided by his native country. France being a Catholic monarchy, Richelieu had no such ideology at his disposal. But his king had more subjects by far than any other Christian ruler, including the emperor and the Spanish king. Moreover, their territories were less compact.[29]

Neither the Swedes nor the French had suffered from Habsburg aggression in their own territories, nor was this an imminent threat. They could challenge the Habsburgs militarily. However, they had to be concerned not just with power but also with rank and thus with prestige and legitimacy. Therefore, a military challenge necessitated at least some semblance of a just cause, an official motive for waging war that was not merely self-seeking—hence the importance of accusing the Habsburg dynasty of abusing its position to oppress everybody else.

The French and Swedish crowns both officially justified their intervention in the German war by claiming that the princes of the empire were in danger of being subjugated by the emperor (assisted by the Spanish king), and that any strengthening of the Habsburg position would threaten actors outside the empire as well. This claim was the main argument of the widely circulated war manifesto for Gustaf Adolf. Written by his councilor Johan Adler Salvius, it accused the Habsburgs of having always plotted a "universal monarchy" and the conquest of, at least, all western Europe.[30] More than a decade later, Salvius was still repeating that charge in the run-up to the peace talks, where he was to be one of the Swedish plenipotentiaries. In 1643 and 1644 he urged the French to prepare for the congress by stepping up not only their military efforts but also their propaganda efforts. Both the French and the Swedish sent diplomatic missives to the German princes warning them once more of Habsburg designs for "universal monarchy" and "absolute dominion" and suggesting that these would begin with their own enslavement if they failed to support the Franco-Swedish efforts to protect them.[31]

Salvius, who spent much of his life in Germany, knew he would not be taken entirely seriously. The fulsome protestations of Habsburg villainy and Swedish

28. Schmidt 1998, 49.

29. Twenty million inhabitants is the standard figure given for seventeenth-century France. See, for example, Burkhardt 1992, 51.

30. Salvius 1630, English translation in Symcox 1974.

31. Osiander 1994, 79–80.

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selflessness in his relatively accessible 1630 manifesto must not be taken at face value. But Salvius also knew that, however far-fetched the accusation, in terms of public relations a small fig leaf was infinitely better than none. Moreover, far-fetched or not, the charge against the Habsburgs really hinged on unverifiable Habsburg intentions and was thus conveniently irrefutable. By contrast, the French delegation repeatedly expressed surprise at how little even Protestant German princes embraced the notion of a Habsburg menace, which the French routinely conjured up in the initial phase of the congress—but later dropped.[32]

The Westphalian Myth in IR

While its original addressees were thus relatively impervious to the anti-Habsburg propaganda, posterity has proved more amenable. Imbued with the ideal of the nation-state and, indeed, harboring more or less explicit nationalistic (as well as confessional) preconceptions, nineteenth- and twentieth-century historians readily espoused the view that somehow the Danes, Dutch, French, and Swedes were really "defending" themselves while also selflessly helping others to ward off oppression. The Habsburg dynasty, on the other hand, found few sympathizers, because it could not be harnessed for any national cause. German historians tended to point to its "excessive" ambition to explain its failure to create a German nation-state. Had the Habsburgs not pursued such far-flung European, even global interests, this argument goes, they could have concentrated successfully on their "German" role. In this way, whatever the national perspective from which they wrote, historians could agree to cast the Habsburg dynasty as the "villain" in line with seventeenth-century propaganda. Unaware of its roots in nineteenth-century historiography, but still very much under the normative influence of the concept of the nation-state underlying that literature, twentieth-century IR scholars have been among the most eager continuators of the old propaganda image of the war. The notion that the peace enshrined a new, anti-hegemonial order goes back to this image.

I suspect that many of the misleading statements about 1648 in IR literature derive directly or indirectly from an oft-quoted 1948 article by Leo Gross.[33] In line with the many (predominantly legal) older scholars cited in that article, Gross regarded the peace as a major turning point. For him it was "the majestic portal which leads from the old into the new world."[34] But it looks as if having decided to check the treaties—which he quotes—for support of this view, he was disappointed to find little that was serviceable. Probably for this reason he essentially dismissed a key bit of evidence. The "actual terms of the settlement," Gross writes,

32. Ibid., for example, 37–38.

33. Originally published in the *American Journal of International Law*, it was later included in a reader edited by Richard Falk and Wolfram Hanrieder (1968), and again in a posthumous collection of essays by Gross (1993). That volume opens with the 1948 article, which the editor, Alfred P. Rubin, in his introduction describes as "timeless" and "seminal." Rubin also comments that Gross "popularized the phrase and the notion of a 'Westphalian constitution' for the international order" (Gross 1993, x).

34. Gross 1948, 28.

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> would hardly suffice to account for the outstanding place attributed to it in the evolution of international relations [!]. In order to find a more adequate explanation it would seem appropriate to search not so much in the text of the treaties themselves as in their implications, in the broad conceptions on which they rest and the developments to which they provided impetus.[35]

Gross goes on to express or at least adumbrate almost all the elements of the Westphalian myth that form the common pool from which scholars routinely draw: how the war was a struggle between hierarchical, "universalistic" aspirations and the aspirations of the rising individual states; how the peace was really about sovereign equality; how it was a charter for all Europe; how, implicitly at least, it was based on the principle of the balance of power; how it effectively sidelined the Pope; and so on. The old-fashioned learned style with its ample references to scholars now largely forgotten has probably made the piece appear more historically knowledgeable and less speculative than it really is. Gross after all was an expert on international law, not history (I know of no other work of his that deals with a pre-twentieth-century topic). As the quotes at the beginning of this section show, much subsequent IR literature then introduced a further twist by assuming that the various tenets that according to Gross the treaties implied were actually laid down in them.

I am aware of only one outspoken IR critic of the standard view of the settlement, and even he seems to have gone back on his original, more resolute stance on the issue. In an essay published some years ago, Stephen Krasner dismissed the alleged link between 1648 and the creation of the sovereign territorial state, asserting unambiguously that "the conventional view that the Peace of Westphalia of 1648 marks a turning point in history is wrong" and that the peace "was not a clear break with the past."[36] But in his most recent book, Krasner writes that "the Peace of Westphalia was a break point with the past." He concedes that even though this break point was "not the one understood by most students of international relations and international law," the settlement "did mark the transition from Christendom to reason of state and balance of power as the basic cognitive conceptualization informing the actual behavior of European rulers."[37] This looks like a nod to conventional wisdom, indeed, like a typical instance of attributing to "Westphalia" concepts of IR theory whose factual link with the settlement is far from clear. While acknowledging that this expression is incorrect historically, Krasner also employs the term "Westphalian sovereignty" throughout the book.

Given that IR scholars, much more so than recent historians, continue to put such emphasis on 1648 as a turning point, why have there not been more efforts at checking the standard account of the settlement against, at least, the actual treaties? One reason, perhaps, is that they are difficult to understand. Perusal of the treaties, filled as they are with endless technical detail on constitutional and other matters of

35. Ibid., 26.
36. Krasner 1993, 235.
37. Krasner 1999, 82.

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the Holy Roman Empire, must leave nonspecialists bewildered and thus all the more inclined to accept the available standard interpretation. Yet on a deeper level, the conventional view may serve an important function. A typical founding myth, it offers a neat account of how the "classical" European system, the prototype of the present international system, came about. Conveniently and comprehensively, it explains the origin of what are considered the main characteristics of that system, such as territoriality, sovereignty, equality, and nonintervention. It fits perfectly with the accepted view of what international relations is about, or at least has "traditionally" been about: relations of a specific kind (with the problem of war occupying a central position) among actors of a specific kind (territorial, sovereign, legally equal). While IR authors are divided on the applicability of this conventional model to current phenomena, very rarely do they question its applicability to the past.

The Peace Treaties and the Problem of Sovereignty: Some Clarifications

I have argued that the standard account of the peace ultimately reflects not its actual content but wartime anti-Habsburg propaganda. The quotations from IR scholars adduced earlier all create the impression that the settlement laid down what the propaganda image of the war would lead one to expect: a confirmation of the autonomy, or sovereignty, of the various European actors, just saved from attempted oppression. But since, rather than propaganda, the treaties deal with practicalities, the settlement contains nothing of the sort. It is silent on the issue of sovereignty, or, less technically, independence, of European actors. It does not refer to any corollary of sovereignty either, such as nonintervention. It does not deal with the prerogatives of the emperor, nor does it mention the Pope. There is nothing in it about the balance of power.

Moreover, while delegates from several countries attended the congress, the treaties that it produced were not a pan-European charter. The Peace of Westphalia proper was an agreement between only three parties. It consists of two treaties signed on 24 October 1648, one—the Treaty of Münster (*Instrumentum Pacis Monasteriense* or IPM)—between the Holy Roman Empire and the king of France, and the other—the Treaty of Osnabrück (*Instrumentum Pacis Osnabrugense* or IPO)—between the Holy Roman Empire and the queen of Sweden. A large portion of both treaties is identical and about internal affairs of the Holy Roman Empire. This is the main focus of the settlement and will be discussed in the third section. Apart from this, the treaties are concerned with certain territories awarded to France and Sweden, respectively. France and Sweden were also made guarantors of the settlement, which theoretically authorized them to intervene in the empire in certain circumstances, but this provision never gained practical relevance.[38]

38. I have given a detailed analysis of the peace talks and the treaties elsewhere (Osiander 1994, chap. 2).

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Like all other actors outside the empire, the French and the Swedes as the two non-German signatories to the treaties took their own complete independence for granted. So did everybody else. No one, before or during the war, had questioned that independence, let alone threatened it militarily. Why should they have wanted it confirmed? The treaties confirm neither their "sovereignty" nor anybody else's; least of all do they contain anything about sovereignty as a principle. It is because of the arbitrary habit of regarding 1648 as a milestone in the evolution of sovereignty that this concept is projected into the settlement, which becomes possible only if the historical evidence is either ignored or forced into a straightjacket. The apparently ineradicable notion (repeated even by many recent historians of the war) that the Peace of Westphalia sanctioned the "sovereignty" of Switzerland and the Netherlands and their independence from the empire demonstrates this. In the case of the Swiss it is based on a willful (and sometimes uninformed) interpretation of the relevant clause in the treaties, giving it a meaning that its drafters did not intend. And as to the Dutch the treaties do not even deal with them.

The complete autonomy of Switzerland vis-à-vis the empire was uncontroversial in practice, and the Swiss were reluctant to have anything to do with the peace congress. If they eventually allowed themselves to be represented there by the burgomaster of Basel, it was because this city had only joined the Swiss confederation after the other cantons had had their autonomy recognized in a treaty of 1499. The supreme courts of the empire (more particularly, the Imperial Cameral Tribunal) did not consider Basel to be exempt from their jurisdiction and allowed lawsuits against Basel and its citizens, a situation that had caused continual irritation. For this reason Basel insisted on having the immunity of the entire confederation reconfirmed in such a way that it would cover Basel, too. The request was granted, and a clause to that effect included in the treaties.[39] This clause, which explicitly names Basel as its initiator and beneficiary, restates the immunity *(exemptio)* of the Swiss cantons from the jurisdiction of the empire and their complete autonomy *(plena libertas).*

Both terms were traditional, and neither signifies, or even presupposes, sovereignty in the modern sense.[40] A recent article by Franz Egger repeats the traditional assertion that Swiss "sovereignty" was recognized in 1648. Paradoxically, the same article furnishes strong evidence that the Swiss themselves saw no discontinuity but still regarded themselves as associated with the empire. In conclusion, Egger concedes with evident puzzlement that most Swiss "had not realised that Switzerland had become a sovereign state independent of the empire."[41] But the explanation for this is simply that indeed it had not, at least not in the sense that its status had changed in 1648. For several more decades, at least two Swiss cantons retained references to the Holy Roman Empire in their oath of citizenship.[42]

39. IPM sec. 61; IPO art. 6.
40. For an analysis of the wording, see Müller 1946.
41. Egger 1998, 431.
42. Stadler 1998, 391.

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Concerning the Dutch, their autonomy from the empire was likewise unquestioned. At the peace congress, the Dutch did not raise the issue of their relationship with the empire. IPM or IPO do not deal with them, and they did not sign either of those documents. What interested the Dutch was, of course, the definitive recognition of their independence by Spain. This was granted in the Treaty of Münster of January 1648, which is not part of the Peace of Westphalia (of October 1648) proper. In the Spanish-Dutch treaty, the emperor and the empire are only mentioned once. Article 53 is concerned with "the continuation and observation of the neutrality, friendship, and good neighbourhood" between the emperor and the empire, on the one hand, and the Dutch, on the other, which the Spanish king undertakes to procure from the emperor and the empire. The Dutch for their part pledge it already in Article 53 itself.

Robert Feenstra has discussed this matter in a thorough 1952 article that should have laid to rest the notion that Dutch independence from the empire was obtained in 1648. At the request of the Spanish king, the emperor produced an appropriate declaration in July 1648. The Reichstag only looked into the matter in 1654, when it voted a preliminary resolution according to which it was willing to provide the desired declaration in exchange for a similar, reciprocal one from the Dutch themselves. This resolution was communicated to the Dutch States General, but they did not pursue the matter further.[43] The way the relationship between the empire and the Dutch was discussed here shows that all the parties involved already regarded the Dutch republic as a distinct entity.

Summary

In this section I have shown that the prevalence of the Westphalian myth in IR is the result of nineteenth- and twentieth-century historians adopting a certain standard account of 1648, influenced by ideas that can be traced to anti-Habsburg propaganda of the Thirty Years' War. In IR, this account has been further distorted through the probable intermediation of Leo Gross. Though he was not himself a historical expert, his commentary on the settlement nevertheless gained near-canonical acceptance.

Even historians have been slow to distance themselves from cherished interpretive tradition. The effect of this tradition may be seen in the frequent claims about Dutch and Swiss "independence from the empire" that the 1648 peace is erroneously thought to have brought about and which cannot be explained otherwise. In fact, in historical works this old, sovereignty-centered interpretive overlay is now mostly latent rather than the object of explicit propositions as is the case in IR. I do not think that statements of the kind quoted at the beginning of the section would pass muster with any historians writing now. However, the lack of a clear, explicit break with the old type of account has made it easier for IR to cling to its version of it, extreme and over-simplified as it is even in comparison to many older historical writings.

43. Feenstra 1952, 196–205.

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The Holy Roman Empire from an IR perspective

While, originally, the peacemakers entertained visions of a settlement ending all conflict in Christendom, four years of negotiations brought "only" the Peace of Münster between Spain and the Dutch Republic and the Peace of Westphalia for the empire; the war between Spain and France continued until 1659. It is to the empire, not to the European system at large, that the Peace of Westphalia is devoted.

Concerning the effect of the peace on the emperor and the empire, IR scholars once more offer far-reaching and generally concordant claims. "Westphalia thwarted the hegemonic aspirations of the emperor by conceding the right of over three hundred political entities to enter into making alliances and conduct their own foreign affairs without interference."[44] "The Treaty of Westphalia gave virtually all the small states in the heart of Europe sovereignty, thus formally rendering the Holy Roman Emperor politically impotent. . . . The powers of . . . the emperor . . . were drastically reduced by the Treaty of Westphalia."[45] "Although technically still part of the empire (which would last in name until 1806), these [German] principalities gained all the trappings of sovereign statehood. The Peace of Westphalia formally acknowledged their status and granted them all the rights of state actors. . . . The Peace of Westphalia made the territorial lords of the basically defunct Holy Roman Empire full participants in the international system."[46] "By ending Habsburg predominance [the 1648 settlement] gave independence to the states of Germany."[47]

Once again such statements are hardly tenable. And once again, the habit of misunderstanding and largely ignoring the Holy Roman Empire in the last century and a half of its existence goes back to the nation-state-oriented historiography of the nineteenth century. This habit was based on the notion that the unified, centralized, sovereign nation-state was the desirable endpoint of history, and that, regrettably, Germany had failed to reach this stage in the early modern period when other countries first did so. Frequently, this failure was blamed in large measure on the Peace of Westphalia. As late as 1960, Fritz Dickmann, in what is still the standard study of the peace congress, termed the settlement "a national disaster" for Germany.[48]

The conceptual and normative fixation on the unified sovereign nation-state has for a long time made it almost impossible to understand the empire on its own terms. The tendency to treat the separate territories of the empire as, in practice, sovereign was near irresistible because it seemed impossible to imagine what else they could have been. If they were sovereign, then surely the empire was essentially meaningless. At the same time, those territories were not totally like other state actors. In some ill-understood way they still seemed to have residual obligations toward the

44. Boucher 1998, 224–25.
45. Knutsen 1992, 71.
46. Spruyt 1994, 29, 171.
47. Wight 1986, 31.
48. Dickmann 1960, 494.

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empire, at least in a formal sense, and they were mostly small. As a consequence, they were treated as a slight but unimportant aberration that did not challenge the view of the modern European system as based on the sovereign state as its unit. Only relatively recently has the empire been "rediscovered" by historians.

In this section I show how very different the empire looks if one breaks free from the fetters created by regarding sovereignty as the sole possible master concept for interpreting relations among autonomous actors. I describe the general structure of the empire and then highlight how its component units were subject not to any governmental authority but to external juridical control. Finally, I highlight the structural relationship between the empire and the European system at large and discuss how this analysis contributes to a better understanding of the European system, or indeed any international system.

A Cooperative Legal Order of Non-Sovereign Autonomous Entities: The Concept of Landeshoheit

The Peace of Westphalia did not establish the "Westphalian system" based on the sovereign state. Instead, it confirmed and perfected something else: a system of mutual relations among autonomous political units that was precisely not based on the concept of sovereignty. Understanding this alternative model requires an analysis of the constitution of the empire. The mutual relations of the estates of the empire (*reichsstände*)—those princes and cities of the empire that had no other hierarchical superior than the emperor and were entitled to vote in the imperial diet, the Reichstag—were based on constitutional law. "In a peculiarly important sense, the empire really *was* its constitution."[49]

Put simply, the 1648 peace was the outcome of the breakdown of the Augsburg religious peace of 1555. Religious rights were the one area where the 1648 settlement substantially added to the constitution of the empire. It also clarified other aspects of the constitution but there abstained from innovating. It did not seek to alter the way the estates of the empire, on the one hand, and the emperor, on the other, were balanced against each other. The prerogatives of the emperor are not dealt with in the peace. Formally, they remained the same in 1648 as they had been in 1618.

Compared to the religious-political deadlock that had paralyzed the empire during the decade or two preceding the war, it emerged from the peace congress unchanged in its conception, but in a better working condition.[50] The way the Peace of Westphalia is discussed in much of the literature tends to imply that the empire was much more divided after 1648 than before 1618, and that the role of the emperor was

49. Gagliardo 1980, 4 (emphasis in original). For a good overview of the constitution, see von Aretin 1993, chap. 1; Buschmann 1984; and Gagliardo 1980, chap. 2. The analysis of the constitution in Krasner 1993 is not entirely reliable. Eighteenth-century works on the constitutional law of the empire are still invaluable; see, for example, Moser 1745; or, in English, Pütter 1790.

50. This is pointed out by Georg Schmidt (1998, 7, 109).

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much reduced by the peace. But even before 1618 the empire was not a unitary state, and the constitution limited the emperor's role. Conversely, the post-1648 empire was not the congeries of basically sovereign territories often depicted by scholars, and recent analyses of the emperor's position after 1648 concur that it remained stronger than earlier literature suggests.[51]

The emperor exercised direct jurisdiction only over his own dynastic lands, not over the subjects of other estates of the empire. Yet he retained a pivotal role in the politics of the empire even after 1648. He exercised considerable influence over the Reichstag. Motions he proposed carried particular weight, and the Habsburgs disposed of a considerable number of Reichstag votes. Conversely, the emperor could veto any decision of the Reichstag. He also retained certain other prerogatives, such as supreme command of the joint army that the estates of the empire would raise if the Reichstag decided it.

The Reichstag, the assembly of the estates (or their delegates), was competent to deal with any matters of concern to the empire or to individual estates. Whereas previously it had been called by the emperor at irregular intervals, from 1663 onward it was a permanent body established at Regensburg. It was composed of three councils. The electoral college comprised those princes who were entitled to elect the emperor. After 1648 there were eight (and for some decades nine) of them. The college of princes comprised the other princes. There were one hundred votes in this college. However, major princes had several votes because they ruled several legally distinct territories. No less than about thirty votes were in the hands of members of the electoral college. Conversely, about a hundred minor lords did not have separate votes but shared in a total of six collective votes, while the so-called imperial knights (members of the landed gentry who enjoyed certain individual and collective privileges once granted by the emperor) had no representation in the Reichstag. The usual impressive figures that put the number of autonomous entities in the empire anywhere between 300 and 2,500 fail to take account of these distinctions: the empire was not composed of "like units" in the Waltzian sense.[52] Finally, the college of cities comprised the fifty-one imperial free cities and an equal number of votes.

Motions were passed if two councils approved them. In practice, the electoral and princely delegates always agreed with each other rather than leave a decision to the cities, but that does not mean that the cities had no political weight. Particularly active in the economic field,[53] the diet served as a forum for discussion but did also pass binding legislation for the empire as a whole. It could sanction the behavior of individual estates, if necessary by coercive means, but even its mere censure was something that princes or cities preferred to avoid. The image of a cumbersome and

51. See Buschmann 1993; Haug-Moritz 1992, for example, 137, 251; and Press 1990.
52. Waltz 1979, 93.
53. Blaich 1970.

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politically marginal institution traditionally associated with it has recently been vigorously attacked by Johannes Burkhardt.[54]

The empire had no central government (either before or after 1648): it was not a state, but a regime, in IR terminology. The estates of the empire, that is, its princes and free cities, did the actual governing within their territories. This right, confirmed by the Peace of Westphalia,[55] was known as *landeshoheit*, literally "territorial jurisdiction." Scholars writing in English sometimes render it as "territorial sovereignty."[56] This is misleading because what makes *landeshoheit* interesting from an IR point of view is precisely that which makes it different from sovereignty.

Johann Jacob Moser, an eighteenth-century authority on German constitutional law, defines the *landeshoheit* of the estates of the empire as

> a right pertaining to them and empowering them in their lands and territories to command, to forbid, to decree, to undertake, or to omit everything that . . . pertains to any ruler, inasmuch as their hands are not tied by the laws and traditions of the empire, the treaties with their local estates and subjects, the latter's ancient and well-established freedoms and traditions, and the like.[57]

As this definition shows, the autonomy of the estates was limited in two ways: externally through the laws of the empire and internally through the constitutional arrangements within the various territories. The estates were not free to shake off either kind of restraint unilaterally. Changing the laws of the empire required the consent of the majority of at least two of the three Reichstag councils and of the emperor. Likewise, constitutional changes within the various territories of the empire could not be imposed by the government without the consent of existing representative bodies in those territories.

The limitations imposed on the estates of the empire by the laws of the empire may be illustrated by examples from the Peace of Westphalia. It is often asserted, for instance, that the Peace of Westphalia was based on the principle *cuius regio eius religio*, meaning that a ruler could determine the religion of his or her subjects. On the contrary: the *cuius regio*-system established by the 1555 Peace of Augsburg proved destabilizing and ultimately unworkable, which is why it was abandoned at the Peace of Westphalia. Regarding official religion, the 1648 treaties laid down that each part of the empire would henceforth be frozen according to its situation (Catholic, Protestant, or mixed) on 1 January 1624.[58] In other words, the Peace of Westphalia deprived the princes and free cities of the empire of the power to determine the religious affiliation of their lands. It also guaranteed the private exercise of any recognized denomination (Catholic, Lutheran, Calvinist) and mandated a certain amount of legal protection for the adherents of minority faiths. This

54. Burkhardt 1999.
55. IPM sec. 62, 65; IPO art. 8.1, 8.4.
56. For example, John Gagliardo.
57. Moser 1745, 492–93.
58. IPM sec. 47; IPO art. 5.1 ff.

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whole body of rules became part of the laws of the empire, which meant that individual princes and cities could not abrogate it.

Another element of the Peace of Westphalia that is often interpreted wrongly as making the estates of the empire "sovereign" is the right to conclude alliances with foreign actors. The estates had always had this right. It is often claimed that the 1635 Peace of Prague, proposed by the emperor, outlawed foreign alliances, but this is not true.[59] The frequent assertion that this was a new right, "won" in 1648, is thus untenable.[60] Nor did this right amount to sovereignty. The passage confirming it in the treaties stipulates that it must not be exercised to the detriment of the emperor or the empire and its public peace or the 1648 settlement, a formulation in line with *landeshoheit*, but not with sovereignty.[61] Even after 1648, other European actors did not recognize the estates of the empire as sovereign.[62]

A System of Juridical Control

The empire possessed two supreme courts who heard complaints regarding violations of the laws of the empire and of the internal constitutional arrangements of its component entities. The role of these courts is worth examining in more detail.

The Imperial Cameral Tribunal (*Reichskammergericht*) was at Wetzlar. The emperor appointed some of its judges, but most were nominated by the estates of the empire according to a complicated key. The judges, some noblemen and some commoners, had to possess high legal qualifications; the court rejected candidates it deemed unfit. The Peace of Westphalia provided that half the judges must be Protestant; it also called for a total of fifty judges; however, the estates of the empire, who financed the court through a special tax, proved unwilling to pay for so many.[63] After 1648 there were about twenty judges, divided into two so-called senates that heard cases independently; in 1782 their number was raised to twenty-eight, with three senates.

The Imperial Aulic Council (*Reichshofrat*) was at Vienna. It had eighteen full members, complemented, in the eighteenth century, by a dozen or more unpaid supernumeraries. Members were appointed, and paid, by the emperor alone. Only six of the full councilors were Protestant, but in religious matters they could not be overruled by the majority. The council was divided into the Lords' Bench *(Herrenbank),* whose members were recruited from the nobility, and the Knights' and Scholars' Bench (*Ritter- und Gelehrtenbank,* the "knights" being distinguished by a modest title comparable to a British knighthood), but it always decided as one body.

59. Repgen 1998, 360.
60. Böckenförde 1969.
61. IPM sec. 63; IPO art. 8.2.
62. Duchhardt 1990, 8, 11, 19.
63. IPM sec. 47; IPO art. 5.53.

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Legal qualifications were required of the councilors regardless of which bench they sat on, and their votes had the same weight.[64]

For most practical purposes, litigants were free to seize either court as they saw fit (it was not possible to appeal from one to the other). Both acted as appeals courts in civil proceedings against decisions by the highest courts in the individual territories of the empire. Over the centuries many estates of the empire obtained a so-called *privilegium de non appellando,* which restricted the right of appeal to the two supreme courts; sometimes the possibility of appeal was excluded altogether. More frequent was the so-called *privilegium limitatum*, fixing a variable minimum cash value for cases that could be appealed to the supreme courts. This limitation of access (granted, however, only to territories that themselves had appeals courts) was vital to prevent the supreme courts from drowning in their massive case loads. *Privilegia de non appellando* had no validity if the litigants claimed, credibly in the eyes of the judges, that they had been denied due process. In this fashion, any litigation could be brought before the supreme courts, including criminal proceedings, which they were not otherwise competent to deal with. Apart from appeals, both courts also dealt with complaints against the estates of the empire—that is, quarrels among the estates themselves as well as complaints by subjects against their ruler. One of the most interesting aspects of the legal order of the empire is that anyone within it could take their ruler to court (only the emperor himself was immune); here, too, *privilegia de non appellando* had no validity.

Many such lawsuits were brought against rulers by the local estates *(landstände,* that is, parliamentary assemblies or permanent committees of notables that operated in most territories of the empire). They could and frequently did turn to the supreme courts, usually the Aulic Council, if they held that their prerogatives had been infringed. Often the conflict concerned taxation, which in most territories was subject to the approval of the local estates. Examples of this are the well-known constitutional quarrels in Mecklenburg and Württemberg.[65] Both quarrels continued intermittently over several decades, reflecting long-drawn-out power struggles between the local dynasty and its estates and in which the Aulic Council played a key role. In both cases the conflict at one point led to the deposition of the ruler by the emperor. Following a complaint by the Württemberg estates before the Aulic Council, the emperor deposed the Württemberg regent Frederick Charles in 1693. Similarly, a complaint before the Aulic Council by the Mecklenburg estates eventually caused the deposition by the emperor of Duke Charles Leopold in 1728.[66] Both quarrels eventually resulted in victories of the estates over their respective princes (Mecklenburg in 1755, Württemberg in 1764/70).

64. On the two courts see, for example, Diestelkamp 1990 and 1997; von Gschliesser 1942; Hertz 1961; Hughes 1988; and Smend 1911.

65. On Mecklenburg, see Hughes 1988; and Jahns 2000. On Württemberg, see Carsten 1959, chap. 1; Haug-Moritz 1992; Liebel-Weckowicz 1984; and Wilson 1995.

66. Deposition of a ruler, normally following a decision either by one of the two supreme courts or by the Reichstag, occurred on a number of occasions after 1648; see Trossbach 1986, whose list, however, is not exhaustive.

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This pattern was typical and is likewise found, for example, in eighteenth-century Bavaria: by twice bringing complaints before the Aulic Council (in 1760 and 1765) while threatening to do so on other occasions, the local estates there also successfully defended their traditional control over the taxation system against recurrent attempts by the prince to disempower them.[67] The system was not a one-way street; for example, in early eighteenth-century East Frisia it was the ruler who repeatedly sued his estates before the Aulic Council.[68] But mostly complaints were brought against, not by, a ruler.

That both courts were sympathetic to "the slightest complaints brought by those recalcitrant vassals and subjects," as the Vienna envoy of the duke of Mecklenburg-Schwerin put it in 1714, was a widespread and apparently justified opinion.[69] Both courts gave priority to complaints brought by subjects against their rulers.[70] Such complaints were also brought by private individuals. Bruno Heusinger gives details of some cases from the 1780s in which the Cameral Tribunal found in favor of lower-class subjects against their prince.[71] "In both courts, a distinct receptivity to the urgency of cases involving immediate human misery can be confirmed."[72]

Low social status or limited funds were no automatic obstacle to litigation before the supreme courts, which were required to assign needy parties members of their own staff as counsel free of charge. Peasant complaints were common. There are numerous eighteenth-century instances of peasant delegations from sometimes distant parts of the empire seeking personal audiences with the emperor to voice their complaints (even though this conferred no advantage over addressing the courts directly). The emperor on such occasions gave the formulaic reply, "you shall have justice *[Euch wird Recht werden]*" and turned the matter over to the Aulic Council.[73] Peasants also seized the Cameral Tribunal. A member of its staff observed in 1767 that "these kinds of lawsuits [that is, complaints against rulers] have unfortunately become so frequent of late that every day whole flocks of peasants may be seen" on their way to the court.[74]

In the eighteenth century, the Cameral Tribunal received 220 to 250 new cases each year.[75] In the 1790s it produced in excess of one hundred decisions annually.[76] Much has been written about an allegedly huge backlog of cases and inordinate delays in the workings of the court. However, those eighteenth-century cases of which I am aware were processed relatively quickly and certainly no more slowly than one would expect from a similar court today. The discrepancy between the

67. Von Aretin 1997b, 160–61.
68. Haug-Moritz 1992, 28.
69. Quoted in Vierhaus 1976, 48.
70. Von Aretin 1993, 143.
71. Heusinger 1972, 9–10.
72. Gagliardo 1980, 31–32.
73. See Diestelkamp 1997, 135–36; Press 1982, 237–38 and 1990, 146; and Trossbach 1990.
74. Quoted in Trossbach 1990, 142. Peasants habitually sent delegations rather than individuals to represent them.
75. Von Aretin 1993, 148.
76. Von Aretin 1997a, 151.

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number of new cases and the number of final decisions does have something to do with overload, but the matter is more complicated than may appear at first sight. The judges sought to avoid formal decisions and encouraged parties to settle out of court. Often, too, the mere fact of formal proceedings having been initiated at Wetzlar brought about a stand-off or even compromise between parties. The court therefore deferred non-urgent cases unless or until plaintiffs confirmed their interest in continuing the proceedings. Notoriously, such "reminders" were often accompanied by voluntary cash payments to the underfunded court. But this does not appear to have affected the objectivity of the judges, nor, apparently, was it expected to; nor were such payments a precondition for cases being prioritized.

A similar system operated at the Aulic Council, which in the eighteenth century was more popular with litigants. In 1767 it handled 2,088 cases (without necessarily bringing them to a conclusion), in 1779 the figure was 3,388, and in the following five years it averaged around 2,800.[77] If necessary the council could issue a formal, binding pronouncement in a matter of weeks (as in the Württemberg affair in 1764). The Aulic Council was barred from accepting cases originating from within the Habsburg lands, so its docket came mostly from other parts of the empire. As an exception, cases from within the Habsburg territories were brought by Jews, who being under the special protection of the emperor could put all their lawsuits before the council (that is, not just appeals or complaints against estates of the empire). Jewish businessmen often used the council to sue princes of the empire for nonpayment of debts.[78]

The Aulic Council also exercised a certain *droit de regard* over the estates of the empire in nonjudicial matters. In particular it was supposed to watch their finances. Since, in most territories, taxes had to be approved by the local estates, who tended to be stingy, many princes were constantly looking for alternative sources of revenue. To prevent them (or free cities) from contracting too many debts, they were theoretically obliged to have all major loans to them authorized by the council, although this requirement was often evaded. If they defaulted, the council appointed a commission that actually took over the government of their territories until all creditors were paid off; during that time, princes received a pension and were temporarily suspended. This situation was rare but did happen (for example, to the landgrave of Hesse-Darmstadt in the mid-eighteenth century).[79] The princes of the empire probably tolerated this system because it enhanced their often shaky creditworthiness.

In the eighteenth century, the prestige of the emperor and of the empire as an institutional framework rested in no small measure on the legal protection it offered to corporate bodies and individual citizens within its component territories. Johann Stephan Pütter, an eighteenth-century authority on German constitutional law, wrote in 1777 that "the constitution of the German empire indeed shows itself in a very

77. Von Gschliesser 1942, 38–39.
78. Ibid., 35.
79. Von Aretin 1993, 87–88, 109.

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favourable light, since every estate of the empire is free to do good in his lands, but can be prevented from doing evil by a higher power."[80] August Ludwig von Schlözer, a professorial colleague of Pütter at Göttingen and a prominent enlightenment figure, in 1793 spoke of "happy Germany, the only country where, without prejudice to their dignity, one can prevail against one's rulers through legal action before an external tribunal, rather than before their own one."[81]

The emperor, as the official guarantor of the system and in whose name decisions of both courts were handed down, was for all practical purposes forced into an impartial position. He had an interest in supporting subjects against their princes lest the latter become too powerful, but he could not exploit this role to increase his own power at the princes' expense because he could not be emperor against their opposition. But impartial application of the law also served his interests because his function as guardian of the law enhanced his prestige and thus his influence.[82]

The Holy Roman Empire as Part of the European System

As a historical phenomenon the empire proves that relations among autonomous actors do not require those actors to be completely "sovereign" and that the alternative to "sovereignty" is not necessarily "empire" (in the ordinary sense of the word). I also suggest that the post-1648 Holy Roman Empire, on the one hand, and the seventeenth and eighteenth-century European system surrounding it, on the other, do not represent mutually exclusive paradigms. Instead, they are part of a spectrum.

IR scholars have tended to assume that sovereignty—or, more generally, actorhood—in the European system originally presupposed the ability of actors to defend themselves against each other, making the concept little more than a label for a certain level of military capability. According to Charles Tilly, "until recently only those states survived that held their own in war with other states."[83] Building on this kind of "Darwinian" view (albeit acknowledging elements of international "society" even among early modern European states), Robert Jackson has suggested that only later, in the twentieth century, did sovereignty become a purely normative concept, capable more or less in its own right of maintaining the independence even of states unable to defend themselves militarily. Jackson has called "quasi-states" actors whose sovereignty is "merely" ascriptive (such as many former European colonies).[84]

This power-political view of the classical European system has been criticized. John Gerard Ruggie has pointed out that the transition from the Middle Ages to the

80. Quoted in Link 1998, 7.
81. Quoted in Heusinger 1972, 19–20.
82. Gabriele Haug-Moritz, in her magnificent study of the eighteenth-century empire at work, makes a related point. Haug-Moritz 1992, 30–31.
83. Tilly 1990, 63.
84. Jackson 1990.

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early modern period allowed many weak actors (he specifically mentions the "more than two hundred German 'states'") to subsist while more powerful actors disappeared. According to Ruggie, the real issue was not how much power actors had, but how much legitimacy.[85] Hendrik Spruyt, arguing against the "war making" theory of the evolution of the states system put forward by Tilly,[86] holds that city-states and city-leagues as the medieval competitors of territorial actors were not overcome militarily. He explains the triumph of territorial states as the result of a preference for them by "social actors" and a process of "mutual empowerment," that is, preferential recognition granted to each other by a certain dominant type of actors that led to "institutional mimicry."[87]

I think that this deemphasizing of military power as a factor in the evolution of the European system is quite justified. While I would not deny that war making and military rivalry played a large role in the evolution of European states, I would also point out that, in fact, even before the twentieth century European actors hardly ever ceased to exist because of military defeat. The only notable exception to this are the city-states of northern Italy in the late Middle Ages and the early Renaissance. This region and period apart, I cannot think of any European actors destroyed because they were unable to defend themselves before the French Revolution (the suppression of Poland took place after the outbreak of that revolution and was linked to it).

The gradual obsolescence, in the late Middle Ages and the early modern period, of the feudal system with its hierarchy of largely autonomous actors led in some countries to the consolidation of actors at the sub-royal level (Germany, for example), whereas in other countries power gravitated toward the crown at the expense of lesser actors (France, for example). Yet even in the latter case, and even though this process of centralization could indeed be accompanied by warfare between the crown and certain great nobles, warfare by itself did not extinguish any actors. Thus the powerful duke of Burgundy (a vassal, for different territories, both of the French king and the emperor) ceased to be a player in European politics in 1477, not because of the death of Charles the Bold on the battlefield, but because he left no male heir. Through the marriage of his daughter, his dominions fell to the Habsburg dynasty (except that the French crown claimed those parts of the inheritance that it saw as French fiefs). Likewise, the French king eliminated the autonomy of the last of the great French duchies, Brittany, by marrying the crown prince to its heiress in 1514. If the number of actors declined, it was thus generally through marriage and inheritance.

Even the European system at large was really a regime: "sovereignty" or rather actorhood was based not on power but on mutual convention. Throughout the *ancien régime,* military power was a conspicuous attribute of some but not all actors of the system, and its use was built into the regime in which they took part as something that was acceptable if not carried too far. Warfare would stop short of

85. See Ruggie 1989, 28; and compare Ruggie 1993, 163.
86. Spruyt 1994, 30–33.
87. Ibid., 175–76.

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suppressing other actors entirely and remain limited to adjusting their frontiers and assets. Powerful actors tended to fight each other, not weaker actors. Thus in eighteenth-century Europe warfare was a domain of the five major actors, whereas smaller actors tended to be involved only marginally or not at all.[88] The two major eighteenth-century actors that were also estates of the empire, Habsburg and Brandenburg-Prussia, waged war against each other but abstained from attacking weaker German princes.

If the European system as a whole can be called a loose, informal regime with few institutions (though institutions did come to exist, such as standardized forms of diplomacy), the empire was essentially a more developed regime with more elaborate institutions, providing a system of governance for matters of common interest while leaving internal government to each of the participating actors individually. With the military strength of most estates of the empire negligible or indeed nonexistent, evidently their actorhood was exclusively ascriptive: based on rules, not power. They, as well as the collective entity they made up, existed exclusively because of collective and mutual empowerment, which in turn was based on a shared, rather elaborate code of structural and procedural legitimacy. If this is what enabled those units to exist in the first place, it obviously restrained them, too. As well as a system of empowerment, the empire was therefore also a system of collective restraint. It actually shared this double quality with the European system of which it was part but displayed it more conspicuously.

The actors in this system, the estates of the empire, remained free agents in the sense that there was little to prevent them from leaving the empire had they been determined to do so. Interestingly, even the most powerful, like the king of Prussia, apparently never even contemplated leaving. One reason for this may have been the high degree of legitimacy and recognition of the actors' status and possessions that membership in the empire bestowed and that was presumably seen as advantageous even by those who need not have depended on it. Besides, breaking the link with the empire would have made it necessary to gain recognition of the new status thus established afresh and would have entailed a cost (when the elector of Brandenburg adopted the title of king of Prussia in 1701, it required years of negotiations to have even that mere change of title accepted by the other European actors).

While Kenneth Waltz has posited that "in any self-help system, units worry about their survival,"[89] I doubt that this concern applied to European actors of the *ancien régime.* Rather than being exclusively "self-regarding,"[90] they displayed a considerable amount of "social" behavior even in the European system at large and still more in the German subsystem. At least a partial explanation for this social behavior is that the actors in question did indeed feel part of a single society. It is important to realize that before the nineteenth century state and society were not generally seen as coextensive (certainly not in continental Europe). In economic terms, a large

88. This emerges clearly from Duchhardt 1997.
89. Waltz 1979, 105.
90. Ibid., 91.

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territorial state of the preindustrial era was invariably a patchwork of economic circuits with little overlap between them and with local circuits the most important by far. While mercantilist theorists might treat a given monarchy as a unit, that nevertheless did not make it economically integrated. In social and cultural terms, seventeenth- and eighteenth-century European society was still very much a transborder, pan-European phenomenon, the more cosmopolitan the higher up one moved the social ladder; if many people never strayed far from where they had been born, their attachment was less to a political entity than to a locality or area. Consciousness of a common civilization balanced consciousness, within that civilization, of group separateness (ethnicity, for example), which on the whole was not exploited politically.

As late as the dawn of the nineteenth century, the German philosopher Johann Gottlieb Fichte could write that "the peoples of modern Christian Europe may be regarded as a single nation."[91] He pointed out that

> this is how the modern states came into being—not as the origin of states is usually described in jurisprudence, by the gathering and uniting of unconnected individuals under a common law, but rather through the separation and dismemberment of a single, large, but weakly connected human mass. The several states of Christian Europe, then, are pieces torn from the former whole and whose extent has for the most part been determined in rough and ready fashion. It is no wonder that this separation, which occurred not so long ago, is not yet complete.[92]

In the *ancien régime,* rulers felt that the stage on which they acted was watched not just by their subjects but by a wider society, and this latter, wider public was important to them. European rulers would not ignore European opinion, still less German rulers German opinion beyond their borders. Linguistically unified, in cultural terms the empire obviously formed a single society almost entirely unaffected by geographical borders between actors. Comparing the eighteenth-century European system with its German subsystem may well shed light on how the extent to which actors are embedded in transborder social networks (including in the cultural field) influences the character of their mutual relations.

Summary

The main point of this section is that there is more to IR than dealings between "sovereign" actors each seen as a society unto itself. A fixation on sovereignty and the dubious view of sovereignty as based on military capability rather than mutual empowerment have tended to produce a narrow perception of "international" political phenomena. This selective, simplistic approach has been unable to deal with "deviant" patterns such as the Holy Roman Empire. Regularly dismissed as

91. Fichte 1800, 136.
92. Ibid., 140–41.

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unimportant, the empire turns out to be a rich source of insights once the sovereignty-centered view of "international" relations is abandoned for a more open approach. This is especially true if, rather than regarding it as a phenomenon *sui generis,* the empire is seen against the background of the larger European system of which it formed part: its peculiarities throw into relief aspects that are in fact also apparent in the European system.

Conclusion: Sovereignty and IR Theory

All this may offer clues for understanding contemporary international politics, too. What I think emerges from this critique of the standard account of the 1648 settlement and related topics, such as the Thirty Years' War or the nature of the Holy Roman Empire, is the need for a reappraisal of the role that the concept of sovereignty has played in IR theory.

Though the word is older, of course, the concept of sovereignty itself was honed and given its present key role (both interpretive and normative) by the great nineteenth- and twentieth-century international lawyers. This happened while technological progress facilitated and intensified the central administration even of large territorial units, giving greater power than ever to central government and thus making each state more of a closed circuit in economic, political, and social terms. The process by which the single society of medieval Europe, with its intertwining of multiple, "heteronomous"[93] political authorities evolved into neatly divided, "sovereign" territorial states was a gradual one. But the most significant transition occurred with the French Revolution and the onset of industrialization, not with the Peace of Westphalia. As the nineteenth century wore on, the international system owed less and less to its antecedents in the *ancien régime* because industrialization caused its ongoing and ever more radical transformation. It was industrialization that created much more extensive and at the same time more integrated economic circuits, the means to administer them, and—as Ernest Gellner has argued[94]— the phenomenon of modern nationalism as a unifying and functionally indispensable ideology for this new type of political entity.

Only in this kind of system could the concept of sovereignty acquire its present meaning. For a long time after Jean Bodin popularized the concept in the late sixteenth century, political theorists and practicians alike attached more importance to its domestic than to its external side. They were concerned with the power of rulers over their subjects and only marginally with relations among rulers, much less peoples. But now, for the first time in history, the integrating power of industrialization brought about a near congruence between state and society: each "nation" state was now, or at least could conceivably be, its own society, considered complete

93. Friedrich Meinecke, quoted in Ruggie 1992, 159.
94. Gellner 1983.

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unto itself. In this novel situation, regarding sovereignty as a master concept of both domestic and international politics made a great deal of sense.

What goes unnoticed is the historically exceptional and transitory character of that particular situation, of near congruence between state and society. In the context of the new nation-state, sovereignty had a highly positive ring, a popular emotive appeal. And as it increasingly became a central concept of contemporary international politics, historians eager to anchor the new nationalism in history tended to project the heightened role of the concept into the past. Though routine usage of the word itself does go back at least to the seventeenth century, historians have overlooked the fact that the connotations were not quite the same then as later—one major difference being that in the *ancien régime* sovereignty was regarded as pertaining to individual rulers, not their dominions or subjects. With history almost invariably written from a national angle, the transhistorical link connecting past actors to contemporary ones (such as seventeenth-century "France" to nineteenth-century "France") was emphasized over the link connecting actors within a given period.

This tendency made actors appear in retrospect as similarly neatly divided from each other and as similarly inspired only by their own self-interest and largely unfettered by mutual obligation as, from the late nineteenth century onward, the modern sovereign state was seen to be. Actors evidently unable to stand on their own feet militarily, such as the majority of those making up the Holy Roman Empire, tended to be dismissed with contempt. That attitude was also passed on to twentieth-century IR realism with its explicit bias in favor of powerful actors.[95] From a theoretical point of view, unless power as such is regarded as a key variable, powerful actors are no more interesting than less powerful ones; and the primary importance attached to power is itself explained by the historically specific characteristics of late nineteenth-century thinking.[96]

IR theory, and its still-dominant paradigm realism, thus developed against the background of what may be called the ideology of sovereignty. It was not realized that, far from being traditional, this ideology had its roots only in the transient nineteenth-century heyday of state autonomy. Its emotive appeal has made sure that its adherents are still numerous despite the fact that the process of industrialization, with its inexorable dynamic, is now destroying the very autonomy that it at first gave the nineteenth-century state. Industrialization is about division of labor, which it brings about on an ever greater scale. In the nineteenth century, this process raised the level of the most important economic circuits from the local to the "national" (that is, state) level; this evolution made the state more integrated and strong and gave us the sovereign state (rather than prince) as, intellectually, we know it. Very quickly, however, beginning already in the late nineteenth century, industrialization went on to produce ever more division of labor and thus ever greater economic

95. For example, Waltz 1979, 131.
96. See Osiander 1998, 421–22; and Osiander forthcoming.

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interdependence across state frontiers, offsetting the enhanced internal cohesion gained earlier. The administrative prowess acquired by the nineteenth-century state as well as the ideology of nationalism also dating from that period endow the territorial state with considerable staying power. But ongoing division of labor ("globalization") puts it under ever-increasing pressure, and with it sovereignty-based IR theory.

Growing interdependence as a result of industrialization has, for a century or more, continuously undermined the capacity for self-reliance of international actors (states) and will diminish it further. This development has been accompanied by an ongoing swing of the pendulum away from near-total autonomy of states and by a proliferation of international institutions trying to "get in" on the management of transborder politics. As a result, the global system today in certain respects bears more resemblance to the type of system exemplified by the Holy Roman Empire than to the so-called Westphalian model. There is a clear de facto trend in international politics away from classical sovereignty and toward something closer to *landeshoheit,* territorial jurisdiction under an external legal regime shared by the actors. Like the estates of the empire, modern states are also tied into a complex structure of governance that creates a network both of cooperation and of mutual restraint. Participation in this network is voluntary in principle but difficult in practice to escape because of the high cost escaping would entail.

How elaborate (and effective) this external legal regime becomes will evidently depend on the actors' situation. The closest contemporary parallel to the early modern Holy Roman Empire is the European Union. Factors favoring integration and present in both instances would seem to be a common cultural identity and the presence of outside threats faced by all the actors in common. During the peace negotiations of the 1640s, delegates of the German princes expressed their fear that without the empire Germany would come under foreign domination.[97] European integration started in the 1950s with the memory of World War II still fresh and in the face of the Soviet threat. It continues to be fueled by the realization that individually the European states are too weak to defend their interests against, for example, the United States or to face possible new threats from the east. Conversely, at present U.S. unilateralism, the somewhat problematical relationship between the United States and such international organizations as the UN, the likelihood that Washington will stand apart from establishing a world criminal court (the only Western government to do so), and the reluctance of (U.S. dominated) mainstream IR to abandon the "Westphalian" model of international relations with its master concept of "sovereignty" may well reflect the fact that in the current global system the erosion of the autonomy of states affects the United States less than others.

We can shed new light on the debate about whether sovereignty is coming to an end and what this means for international politics once we realize that our current understanding of sovereignty as central, indeed, near indispensable, to international

97. Osiander 1994, 33, 74, and chap. 2 passim.

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relations is based on nineteenth-century rationalizations for conditions prevailing at the time that were not only historically unprecedented but by their very nature transitory. We cannot be moving "beyond Westphalia" if "Westphalia" as generally understood today in IR is really a figment of the nineteenth-century imagination, stylized still further, and reified, by the discipline of IR itself in the twentieth century.

If accepted, my reexamination here of the standard account of "Westphalia" should alert us to a number of important insights: namely, that sovereignty as currently understood does not go back to the seventeenth century; that, even then and nevertheless, relations among autonomous actors were perfectly possible without waiting for the concept (in its current sense) to be invented; that the degree of autonomy of the actors might vary considerably (in part by their own choosing) without therefore necessarily leading to hegemonial domination or even empire (in the everyday meaning of the word); that, consequently, the dichotomy empire-sovereignty is a false one; that a low degree of autarchy of individual actors, on the one hand, and a high degree of transborder social linkage, on the other, will likely produce more elaborate forms of institutionalized cooperation; and that this has happened before and thus is not a revolutionary new phenomenon.

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